

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

NOT FOR PUBLICATION

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LEROY DORSEY,

Plaintiff,

MEMORANDUM AND ORDER  
06-CV-6178 (JG)

-against-

ANDREA R. MILLER; LOUIE DEVIVO;  
MONICA BELL,

Defendants.

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JOHN GLEESON, United States District Judge.

Leroy Dorsey, currently incarcerated at Sing Sing Correctional Facility, files the present action *pro se* pursuant to 42 U.S.C. § 1983. The Court grants Dorsey's request to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915, denies Dorsey's request for appointment of counsel, and dismisses the complaint for the reasons stated below.

**BACKGROUND**

Dorsey filed the instant complaint in the United States District Court for the Northern District of New York, which by order dated November 7, 2006, transferred the action to this Court. Dorsey alleges that defendants perjured themselves during his 1997 criminal trial.

Specifically, Dorsey states:

Andrea R. Miller, Louie Devivo and Monica Bell committed numerous counts of 1[] perjury knowingly to mislead the court and the jury in my criminal trial in 1997 under oath which made my conviction a fraud and denying me my constitutional right to a fair trial. The trial came about from an altercation involving petitioner, A.R. Miller, L. Devivo, M. Bell.

Complaint at 4, ¶ 6. Dorsey seeks monetary damages.

## STANDARD OF REVIEW

\_\_\_\_\_ Under 28 U.S.C. § 1915 (e)(2)(B), a district court shall dismiss an *in forma pauperis* action where it is satisfied that the action “(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” An action is deemed frivolous as a matter of law when, *inter alia*, it “lacks an arguable basis in law, or a dispositive defense clearly exists on the face of the complaint.” Livingston v. Adirondack Beverage Co., 141 F.3d 434, 437 (2d Cir. 1998); 28 U.S.C. § 1915A.

## DISCUSSION

Dorsey alleges that the three named defendants committed perjury during his criminal trial. It is well established that testifying witnesses are entitled to absolute immunity from liability under § 1983 based on their testimony. Briscoe v. LaHue, 460 U.S. 325 (1983); see also Sykes v. James, 13 F.3d 515, 519 (2d Cir. 1993); Blount v. Swiderski, No. 03 CV 23, 2006 WL 3314635, at \*16 (E.D.N.Y. Nov. 14, 2006); Rolon v. Henneman, 443 F.Supp.2d 532, 536 (S.D.N.Y. 2006).

Moreover, even if Dorsey’s claims are not barred by witness immunity, they are barred by the statute of limitations. Claims under § 1983 must be commenced within three years of the alleged violation. See, e.g., Walker v. Jastremski, 430 F.3d 560, 561 (2d Cir. 2005); Pearl v. City of Long Beach, 296 F.3d 76, 79 (2d Cir. 2002) (citing Owens v. Okure, 488 U.S. 235, 249-50 (1989)). Under federal law, the statute of limitations begins to run at the time of the illegal act, or when Dorsey knew or should have known of the injury. See Connolly v. McCall, 254 F.3d 36, 41 (2d Cir. 2001); Eagleston v. Guido, 41 F.3d 865, 871 (2d Cir.1994). Here, Dorsey is complaining of events that took place in 1997. Accordingly, Dorsey’s claims are time-barred.

### **CONCLUSION**

For the reasons stated above, Dorsey's complaint is dismissed. 28 U.S.C. § 1915 (e)(2)(B)(ii). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

So ordered.

JOHN GLEESON  
United States District Judge

Dated: Brooklyn, New York  
December 5, 2006

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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LEROY DORSEY

Plaintiff,

**CIVIL JUDGMENT**

06-CV-6178 (JG)

-against-

ANDREA R. MILLER; LOUIE DEVIVO;  
MONICA BELL,

Defendants.

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Pursuant to the order issued December 5, 2006 by the Honorable John Gleeson, dismissing the complaint pursuant to 28 U.S.C. § 1915 (e)(2)(B)(ii); it is

**ORDERED, ADJUDGED AND DECREED:** That the complaint is hereby dismissed.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore in forma pauperis status is denied for purpose of an appeal.

See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

JOHN GLEESON

United States District Judge

Dated: Brooklyn, New York  
December 5, 2006